

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KOCH ENTERTAINMENT LP AND :  
HUDSON ENTERTAINMENT, INC. :

Plaintiffs, :

- against - :

MOBILE STREAMS, INC., :  
MOBILE STREAMS, PLC., AND :  
THE NICKELS GROUP, INC. :

Defendants. :

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**ANSWER TO  
COUNTERCLAIMS**

**Jury Trial Demanded**

Plaintiffs and Counterclaim Defendants, by their attorneys Daniel J. Aaron, P.C., on behalf of Koch Entertainment LP ("Koch") and The Law Offices of Edward R. Hearn, on behalf of Hudson Entertainment, Inc. ("Hudson"), answer the Counterclaims, based on personal knowledge as to themselves and upon information and belief as to all other matters, as follows:

1. Deny the allegations contained in paragraph 1, except admit that the Counterclaim Plaintiffs purport to seek damages for tortious interference with contract and tortious interference with prospective economic advantage arising under state law.

**THE PARTIES**

2. Admit the allegations set forth in paragraph 2 of the Counterclaims.
3. Admit the allegations set forth in paragraph 3 of the Counterclaims.
4. Admit the allegations set forth in paragraph 4 of the Counterclaims.
5. The allegations contained in paragraph 5 of the Counterclaims state a legal conclusion to which no response is required. To the extent that a response is deemed

required, Counterclaim Defendants do not dispute the assertion of personal jurisdiction by the Court in this matter.

**THE AGREEMENTS**

6. Counterclaim Defendants deny the allegations contained in paragraph 6 of the Counterclaims, and refer the Court to the referenced document for its terms.

7. Counterclaim Defendants deny the allegations contained in paragraph 7 of the Counterclaims, and refer the Court to the referenced documents for their terms.

**ADDITIONAL COMMON FACTS**

8. Counterclaim Defendants deny the allegations contained in paragraph 8 of the Counterclaims.

9. Counterclaim Defendants deny the allegations contained in paragraph 9 of the Counterclaims.

10. Counterclaim Defendants deny the allegations contained in paragraph 10 of the Counterclaims, except admit that they sent certain letters and refer the court to the referenced letters for their terms.

11. Counterclaim Defendants deny the allegations contained in paragraph 11 of the Counterclaims.

12. Counterclaim Defendants deny the allegations contained in paragraph 12 of the Counterclaims.

**FIRST COUNTERCLAIM**

*(Tortious Interference With Contract)*

13. Counterclaim Defendants repeat and reallege their responses to paragraphs 1 through 12 of the Counterclaim with the same force and effect as if fully set forth herein.

14. Counterclaim Defendants deny the allegations contained in paragraph 14 of the Counterclaims.

15. Counterclaim Defendants deny the allegations contained in paragraph 15 of the Counterclaims.

16. Counterclaim Defendants deny the allegations contained in paragraph 16 of the Counterclaims.

17. Counterclaim Defendants deny the allegations contained in paragraph 17 of the Counterclaims.

18. Counterclaim Defendants deny the allegations contained in paragraph 18 of the Counterclaims.

19. Counterclaim Defendants deny the allegations contained in paragraph 19 of the Counterclaims.

20. Counterclaim Defendants deny the allegations contained in paragraph 20 of the Counterclaims.

**SECOND COUNTERCLAIM**

(Tortious Interference With Prospective Business Relations)

21. Counterclaim Defendants repeat and reallege their responses to paragraphs 1 through 20 of the Counterclaim with the same force and effect as if fully set forth herein.

22. Counterclaim Defendants deny the allegations contained in paragraph 22 of the Counterclaims.

23. Counterclaim Defendants deny the allegations contained in paragraph 23 of the Counterclaims.

24. Counterclaim Defendants deny the allegations contained in paragraph 24

of the Counterclaims.

25. Counterclaim Defendants deny the allegations contained in paragraph 25 of the Counterclaims.

26. Counterclaim Defendants deny the allegations contained in paragraph 26 of the Counterclaims.

27. Counterclaim Defendants deny the allegations contained in paragraph 27 of the Counterclaims.

**FIRST DEFENSE**

(Failure to State Cause of Action)

28. The Counterclaim, and each cause of action therein, fails to state facts sufficient to constitute any cause of action upon which relief can be granted.

**SECOND DEFENSE**

(Unclean Hands)

29. Counterclaim Plaintiffs are barred from seeking relief at law or equity under the doctrine of unclean hands.

**THIRD DEFENSE**

(Any Alleged Damages Caused By Others)

30. Any alleged injuries or damages that Counterclaim Plaintiffs claim were fully or partially caused by the acts or omissions of Counterclaim Plaintiffs and/or third parties for whom Counterclaim Defendants are not liable or responsible and over which Counterclaim Defendants have no control.

**FOURTH DEFENSE**

(Comparative Fault)

31. Any alleged injuries or damages alleged in the Counterclaims were caused,

in whole or in part, by the acts, omissions, negligence or wrongdoing of Counterclaim Plaintiffs and/or other persons or entities for which Counterclaim Defendants are not responsible or liable and did not result from any acts, omissions, negligence or wrongdoing on the part of Counterclaim Defendants. Counterclaim Plaintiffs are therefore barred entirely from recovery against Counterclaim Defendants, or, alternatively, any recovery should be proportionately reduced.

**FIFTH DEFENSE**  
(Failure to Mitigate)

32. If Counterclaim Plaintiffs suffered any alleged damages, which damages Counterclaim Defendants deny, Counterclaim Plaintiffs failed to mitigate such damages.

**SIXTH DEFENSE**  
(Notice Of Counterclaim Defendants' Rights)

33. The Counterclaim, in whole or in part, is barred because Counterclaim Plaintiffs had notice of Counterclaim Defendants' rights prior to any purported transfer of rights to Counterclaim Plaintiffs by a third party or parties.

**SEVENTH DEFENSE**  
(Preexisting economic interest)

34. The Counterclaim, in whole or in part, is barred because Counterclaim Defendants were justified in their actions, having a preexisting legal and economic interest in the digital distribution of the music at issue in this litigation.

**EIGHTH DEFENSE**  
(Estoppel)

35. The Counterclaim, in whole or in part, is barred by the equitable doctrine of estoppel.

**RIGHT TO ASSERT ADDITIONAL DEFENSES**


36. Defendants expressly reserve the right to assert and pursue additional

defenses.

WHEREFORE, Counterclaim Defendants respectfully demand judgment in their favor dismissing the Counterclaims with prejudice, awarding Counterclaim Defendants costs and fees and such other, further and different relief as the Court may deem just and proper.

Dated: New York, New York  
November 7, 2007

DANIEL J. AARON, P.C.

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